

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

HYPERQUEST, INC., )  
Plaintiff, ) Case No. 08 C 485  
v. )  
NUGEN I.T., INC. and DAYLE PHILLIPS ) Judge Charles R. Norgle  
Defendants. ) Magistrate Judge Cole  
 )  
 ) JURY DEMAND

ORDER

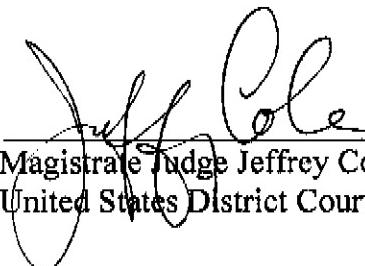
This matter coming to be heard upon Plaintiff's Motion to Compel Production of Rule 26(a) Disclosure Documents and For Entry of Protective Order, Defendant having stated Defendants' intention to re-file Defendants' previously filed Motion for Protective Order, and the Court having set a briefing schedule with respect thereto and having entered the Stipulation and Protective Order signed by the parties in open-court, it is hereby ORDERED that:

1. Defendants are to produce all non-confidential documents related to Defendants' Rule 26(a) disclosures.
2. Defendants are to produce confidential documents, including source code, notwithstanding the briefing schedule set with respect to Defendants' Motion for Protective Order. However, until Defendants' Motion for Protective Order has been fully briefed and decided, Defendants are permitted to mark such confidential materials "Experts' Eyes Only" and such documents shall be produced by Defendants directly to the expert identified by Plaintiff.

3. Until further order of Court, documents that are designated "Experts' Eyes Only" shall be treated as Confidential Information in accordance with the terms of the Stipulation and Protective Order entered May 5, 2008 (the "Protective Order"), which shall be disclosed only to outside experts or consultants retained for purposes of this litigation and their employees, or employees of an independent commercial service as needed to make copies, photographs, or other images of documents or tangible things.

4. Each independent expert and consultant to whom Confidential Information designated "Experts' Eyes Only" is disclosed shall sign a declaration in substantially the form attached as Exhibit A to the Protective Order with the additional acknowledgment that the independent expert or consultant has reviewed and agrees to be bound by not only the terms of the Protective Order but also the terms of this Order.

5/9/2008



\_\_\_\_\_  
Magistrate Judge Jeffrey Cole  
United States District Court

See Attachments 1 and 2  
(e-mails from counsel)



"Hogan, Deborah"  
<Deborah.Hogan@goldbergkohn.com>  
05/08/2008 11:10 AM

To <Proposed\_Order\_Cole@ilnd.uscourts.gov>  
cc <MPeterson@stinson.com>, "Kane, Nora M."  
<NKane@stinson.com>, "Monte Mann"  
<MMann@novackandmacey.com>, "Kristen Werries Collier"  
bcc  
Subject HyperQuest Inc. v. NuGen I.T. et al, Case No. 08 C 485,  
Order regarding Docket No. 51

Dear Judge Cole:

We represent Plaintiff HyperQuest, Inc. in the above-referenced matter. Attached is a proposed order regarding Plaintiff's Motion to Compel Production of Rule 26(a) Disclosure Documents and For Entry of Protective Order pursuant to this Court's ruling on May 5, 2008.

The parties have agreed on all terms of the proposed Order except Paragraph 1, which states that "Defendants are to produce all non-confidential documents related to Defendants' Rule 26(a) disclosures." Plaintiff believes that Paragraph 1 is appropriate and should be included in light of this Court's ruling on May 5, 2008. Defendants do not believe that Paragraph 1 should be included.

Sincerely,

Deborah Hogan

Deborah Hogan | **GOLDBERG KOHN** | 55 East Monroe, Suite 3300, Chicago, Illinois 60603 | direct 312.201.3973 | direct fax 312.863.7473 | [deborah.hogan@goldbergkohn.com](mailto:deborah.hogan@goldbergkohn.com) | [www.goldbergkohn.com](http://www.goldbergkohn.com)

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Order re Motion to Compel.wpd

*Attachment 1*



STINSON  
MORRISON  
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May 8, 2008

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**VIA ELECTRONIC MAIL: Cole@ilnd.uscourts.gov**

The Honorable Magistrate Judge Jeffrey Cole  
Everett McKinley Dirksen  
United States Courthouse  
Courtroom 1838/Chamber 1828  
219 South Dearborn Street  
Chicago, IL 60604

Re: Order regarding Docket No. 51  
HyperQuest, Inc. v. NuGen I.T., Inc. et al.  
Case No. 08 C 485

Dear Judge Cole:

As you know, I represent the Defendants in this matter. We were made aware today that an e-mail was forwarded to you with a proposed Order from Plaintiff's counsel, Deborah Hogan. Specifically, there was representation that a dispute exists as to the production of documents pursuant to Rule 26(a) as previously ordered by you. Such representation is simply incorrect.

The proposed Order which was attached to Ms. Hogan's e-mail is acceptable to us except for paragraph 1 on the simple basis that Your Honor previously ordered the production of these documents, and we do not believe an additional Order to the same effect is necessary. Moreover, it would seem that an additional Order to this effect subsequent to your denial of Plaintiff's Motion to Compel Production (ECF 51) of said documents before such were due was likewise inappropriate and potentially an attempt to subvert your Order of May 5, 2008 (ECF 56). Be that as it may, we do not object to any other provisions within the proposed Order attached to Ms. Hogan's e-mail. We do not feel, however, that paragraph 1 is necessary nor appropriate at this juncture. We will of course comply with the previous Orders and provide such documents as required in all in good course. Thank you for your consideration in this matter.

Very truly yours,

STINSON MORRISON HECKER LLP

*Mark J. Peterson*

KANSAS CITY  
OVERLAND PARK  
WICHITA  
WASHINGTON, D.C.  
PHOENIX  
ST. LOUIS  
OMAHA  
JEFFERSON CITY

MJP:jb  
cc/email: NuGen I.T., Inc.  
Deborah R. Hogan/Chad A. Blumenfield  
Monte Mann/Kristen Werries Collier  
Nora M. Kane

*Attachment 2*